



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0410; FRL-8791-01-Region 9]

**Air Plan Limited Approval and Limited Disapproval; California; Air Resources Board;**

### **Volatile Organic Compounds**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing action on a revision to the California Air Resources Board (CARB) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from vapor recovery systems of gasoline cargo tanks. We are proposing a limited approval and limited disapproval of a statewide rule to regulate this emission source under the Clean Air Act (CAA or the Act), and are also proposing to approve the rescission of a different statewide rule from the California SIP that previously regulated this emission source. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before [Insert date 30 days after the date of publication in the *Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0410 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at [evans.lakenya@epa.gov](mailto:evans.lakenya@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## **I. The State’s Submittal**

- A. *What rule and rescission did the State submit?*

Table 1 lists the SIP revisions addressed by this proposal with the dates they were locally acted on by the California Air Resources Board (CARB). CARB submitted the SIP revisions to the EPA on August 22, 2018.

TABLE 1 - SUBMITTED SIP REVISIONS

Regulation or Provision	Regulation Title or Subject	Date of Local Action	State Requested Action
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014	Certification of Vapor Recovery Systems for Cargo Tanks	Adopted on 07/25/13	Addition to the SIP
Certification Procedure CP-204	Certification Procedure for Vapor Recovery Systems of Cargo Tanks	Referenced in Section 94014 and adopted on 11/7/2014	Addition to the SIP
Test Procedure TP-204.1	Determination of Five Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks	Referenced in Section 94014 and adopted on 11/7/2014	Addition to the SIP
Test Procedure TP-204.2	Determination of One Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks	Referenced in Section 94014 and adopted on 05/27/2014	Addition to the SIP
Test Procedure TP-204.3	Determination of Leak(s)	Referenced in Section 94014 and adopted on 11/7/2014	Addition to the SIP
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94004	Certification of Vapor Recovery Systems – Gasoline Delivery Tanks	Repealed on 06/29/1995	Recission from the SIP
Method 2-5	Certification and Test Procedures for Vapor Recovery Systems of Gasoline Delivery Tanks	Referenced in Section 94004 and effective on 09/1/1982	Recission from the SIP

On February 22, 2019, the submittal for CARB’s California Code of Regulations (CCR), Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014 (Section 94014) and request to rescind CCR, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94004

(Section 94004) were both deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. *Are there other versions of this rule?*

Vapor recovery systems for tanker trucks (hereafter referred to as “cargo tanks”) were previously regulated by Section 94004, which required the use of Method 2-5 “Certification of Vapor Recovery Systems – Gasoline Delivery Tanks.” Section 94004 was approved into the SIP on July 8, 1982.<sup>1</sup> CARB submitted an amended version of Method 2-5 on January 20, 1983, and EPA approved it into the SIP on May 3, 1984.<sup>2</sup> On June 29, 1995, CARB repealed Section 94004 and adopted a new statewide version of the rule at Section 94014, “Certification of Vapor Recovery Systems for Cargo Tanks.” Section 94014 has since been amended on multiple occasions, most recently on July 25, 2013, and consists of a certification procedure and three test procedures that are incorporated by reference. CARB submitted the revised rule, certification procedure, and test procedures to the EPA on August 22, 2018, for inclusion into the SIP.

C. *What is the purpose of the submitted rule and rescission?*

Emissions of VOCs contribute to the production of ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions.

Section 41954 of the California Health and Safety Code requires that CARB “[inspect] and [test]...certified vapor recovery systems upon installation during the permit process and [conduct] regular inspections to check that systems are operating as certified.” Section 94014 allows gasoline vapor recovery systems for cargo tanks to be certified in accordance with Certification Procedure CP-204, “Certification Procedure for Vapor Recovery Systems of Cargo Tanks” (CP-204). The rule incorporates CP-204 by reference. Section 94014 also incorporates by reference three test procedures: Test Procedure TP-204.1, “Determination of Five Minute Static

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<sup>1</sup> 47 FR 29668.

<sup>2</sup> 49 FR 18829.

Pressure Performance of Vapor Recovery Systems of Cargo Tanks” (TP-204.1), Test Procedure TP-204.2, “Determination of One Minute Static Pressure Performance of Vapor Recovery Systems of Cargo Tanks” (TP-204.2), and Test Procedure TP-204.3, “Determination of Leak(s)” (TP-204.3).

CP-204 describes the process for certifying cargo tanks with a system that recovers vapors during the loading and unloading of gasoline. This certification procedure establishes performance standards or specifications for cargo tanks, including trucks and trailers that transport gasoline. TP-204.1 is a detailed test procedure used to determine the five-minute static pressure associated with the dispensing of any fluid. This test procedure is written to reflect application to the hydrocarbon vapors associated with the dispensing of gasoline tested annually. TP-204.2 is used to determine the daily static pressure performance standard, or one-minute standard, associated with the dispensing of any fluid. TP-204.2 is written to reflect application to the hydrocarbon vapors associated with the dispensing of gasoline. TP-204.3 is intended to locate and classify leaks only, and not as a direct measure of mass emission rates from individual sources. This test procedure is used to determine the leak-tightness of vapor control systems used in a) loading of gasoline cargo tanks; b) loading without taking the delivery tank out of service; c) at gasoline terminals and bulk plants at any time; and d) when the system does not create back-pressure in excess of the pressure limits of the cargo tank certification test. The EPA’s technical support document (TSD) has more information about this rule.

The rescission of Section 94004 will remove the rule from the SIP and Section 94014 will replace it.

## **II. The EPA’s Evaluation and Action**

### **A. *How is the EPA evaluating the rule and rescission?***

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control

requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as Moderate or above (see CAA section 182(b)(2)).

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
3. “Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems,” EPA-450/2-78-051, December 1978.
4. 40 CFR Part 63.11092(f)(1), “Standards of Performance for Bulk Gasoline Terminals,” 76 FR 4156 (January 24, 2011).
5. 40 CFR Part 60.501, “National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities,” 48 FR 37590 (August 18, 1983).
6. Maricopa County Air Pollution Control Regulations Rule 352, “Gasoline Cargo Tank Testing and Use,” 60 FR 46024 (September 5, 1995).
7. Maryland Department of Environment Rule 26.11.13.05, “Gasoline Leaks from Tank Trucks” 80 FR 45892 (August 3, 2015).
8. Maryland Department of Environment Method 1008, “Gasoline Vapor Leak Detection Procedure by Combustible Gas Detector,” incorporated by reference COMAR

26.11.01.04C, 78 FR 5290 (January 25, 2013).

9. Texas Commission on Environmental Quality Rule 115.235, “Approved Test Methods” 65 FR 79745 (December 20, 2000).
10. Illinois Environmental Protection Agency Rule 215.584, “Gasoline Delivery Vessels,” 55 FR 26814 (July 29, 1990).

B. *Does the rule and rescission meet the evaluation criteria?*

The replacement of Section 94004 by Section 94014 meets CAA requirements, and Section 94014 is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. Section 94014 is more stringent than Section 94004 as it includes a certification procedure that describes the instructions for determining performance standards, specifications, and test procedures for vapor recovery systems. In addition, Section 94014 is more stringent than the EPA’s 1978 CTG and is as stringent as comparable rules for this source category established in other states. Therefore, Section 94014 implements RACT. The TSD has more information on our evaluation.

C. *What are the rule deficiencies?*

The director’s discretion in Section 94014 does not satisfy the requirements of section 110 of the Act and prevents full approval of the SIP revision. Documents submitted for inclusion into the SIP should not include unbounded director’s discretion that allows the State to approve alternatives to the applicable SIP without following the SIP revision process described in CAA section 110. CP-204 Section 5.4 allows the CARB Executive Officer to approve an alternative test procedure that meets the equivalency criteria established by EPA Method 301. This is acceptable as EPA Method 301 is “a set of procedures ... to validate a candidate test method as an alternative to a required test method based on established precision and bias criteria.”<sup>3</sup> For situations where Method 301 is not directly applicable, CP-204 Section 5.4 allows the CARB

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<sup>3</sup> EPA Method 301, “Field Validation of Pollutant Measurement Methods from Various Waste Media,” 85 FR 63394 (October 7, 2020).

Executive Officer, without approval from the EPA, to “...establish equivalence based on the concepts of comparison with established method and statistical analysis of bias and variance.”

This authority is then incorporated by reference in TP-204.1, TP-204.2, and TP-204.3. Without further specificity regarding the criteria the Executive Officer will use to determine when such alternative test procedures, for which Method 301 is not applicable, will be approved, CP-204 Section 5.4 represents an instance of unbounded director’s discretion and constitutes a SIP deficiency. The TSD has more information regarding this deficiency.

*D. The EPA recommendations to further improve the rule*

The EPA recommends revising Section 94014 to address the deficiency discussed above. Such revisions could include additional detail regarding how to evaluate alternative test procedure requests when Method 301 is not applicable, or could add language resembling federal enforceability sections in CARB’s consumer products regulations to further limit the extent of the Executive Officer’s authority (17 CCR section 94506.5 and 17 CCR section 94517).<sup>4,5</sup> The TSD includes other recommendations for the next time the state agency modifies the rule.

*E. Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA is proposing a limited approval and limited disapproval of the submitted rule. The limited disapproval for CP-204, Section 5.4 and its reference in TP-204.1, TP-204.2, and TP-204.3 is based on the enforceability issue identified in section (II)(C) of this notice. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the *Federal Register***]. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve subsequent SIP revisions that correct the deficiencies identified in the final approval. In

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<sup>4</sup> 74 FR 57074 (November 4, 2009).

<sup>5</sup> 79 FR 62346 (October 17, 2014).



addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline. The EPA intends to work with CARB to correct the deficiency in a timely manner.

Note that the submitted rule has been adopted by CARB, and the EPA's final limited disapproval would not prevent the state agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at:

<https://www.epa.gov/sites/production/files/2015-07/documents/procsip.pdf>.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Section 94014 and the associated certification procedure and test procedures as described in Table 1 of this preamble, and proposing to remove Section 94004 and Method 2-5 also as described in Table 1 from the SIP. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

### **IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the

Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: October 13, 2021.

Deborah Jordan,  
*Acting Regional Administrator,*  
*Region IX.*

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